VZCZCXYZ0016
OO RUEHWEB

DE RUEHQT #0815/01 2542254
ZNY CCCCC ZZH
O 112254Z SEP 09
FM AMEMBASSY QUITO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0022
INFO RHMFISS/FAA NATIONAL HQ WASHINGTON DC IMMEDIATE
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC IMMEDIATE
RUEAIIA/CIA WASHINGTON DC IMMEDIATE
RUEATRS/DEPT OF TREASURY WASHINGTON DC IMMEDIATE
RUEHBO/AMEMBASSY BOGOTA IMMEDIATE 0005
RUEHBR/AMEMBASSY BRASILIA IMMEDIATE 0001
RUEHCV/AMEMBASSY CARACAS IMMEDIATE 0005
RUEHGL/AMCONSUL GUAYAQUIL IMMEDIATE 0016
RUEHLP/AMEMBASSY LA PAZ SEP 0002
RUEHPE/AMEMBASSY LIMA IMMEDIATE 0005

C O N F I D E N T I A L QUITO 000815

SIPDIS
NOFORN
DEPARTMENT PASS TO OPIC, EXIM, USTR

E.O. 12958: DECL: 2029/09/11
TAGS: EAIR ECON EFIN EC
SUBJECT: QUITO MAYOR STRUGGLES TO LAND NEW AIRPORT DEAL

REF: A) 08 QUITO 986; B) 07 QUITO 2571; C) QUITO 59

CLASSIFIED BY: Heather Hodges, Ambassador, Department of State, Executive; REASON: 1.4(B), (D)

¶1. (C) Summary: Ecuador's recent Constitutional Court ruling that all airport fees are government property threatens to derail Quito's new airport. If implemented, the project lenders, including OPIC and Ex-Im Bank, have indicated they will halt construction funding and seek international arbitration. Quito Mayor Augusto Barrera has pledged to satisfy the court ruling and renegotiate a better concession contract for the municipality. Representatives of OPIC and the IDB are scheduled to meet with Mayor Barrera and senior Ecuadorian officials September 15-16 in order to reinforce the urgent need to quickly find a response to the court ruling which preserves the interests of the multilateral lenders and does not weaken the concession agreement.

COURT THROWS A SPANNER IN THE WORKS

¶2. (SBU) On July 23, Ecuador's Constitutional Court (CC) issued judgment 003-09-SIN-CC, ruling that airports and the fees derived from them are the property of the central government. Per the ruling, Quito's municipal government, under newly elected Mayor Augusto Barrera, has jurisdiction of the Quito airport until central government regulations are enacted. The CC ruling follows on the heels of Ecuador's June 6 denunciation of the World Bank's Convention on the Settlement of Investment Disputes (ICSID). Both events constitute a breach of the airport concession contract held by Quiport, a private consortium of three companies (Aecon of Canada, Andrade Gutierrez of Brazil and Houston Airport Systems of the U.S.) and the Canadian Commercial Corporation (CCC).

¶3. (SBU) Project financing for the construction of the new airport is a mix of Quiport equity ($75 million), fees collected from the current airport ($120 million), and loans from four lenders: $200 million from the Overseas Private Investment Corporation (OPIC), , $75 million from the Inter-American Development Bank (IDB), $64 million from the U.S. Export-Import Bank (Ex-Im), and $37.5 million

from Export Development Canada (EDC). The lenders control the disbursement of funds (airport fees collected plus loans) to Quiport from an offshore account.

¶4. (C) The lenders responded to the CC ruling by stopping disbursements to Quiport for the construction of the new airport in Tabala, east of Quito, but continued funding for current airport operations. They also gave written notice to the Government of Ecuador (GoE) on August 13 that the CC ruling and the ICSID denunciation constituted "political events" under their Investor Protection Agreement (IPA), which triggered a 45-day negotiation period, at the end of which the project could legally be declared in default. Tensions were heightened when the municipal government issued letters on August 18 requiring Quiport to comply with the CC ruling by depositing all airport fees directly into a municipal account in the Central Bank. In August 18-19 meetings in Quito, the lenders explained to Mayor Barrera and Coordinating Minister for Strategic Sectors Galo Borja that any redirection of the airport fees would terminate the concession contract and lead to arbitration. To date the municipality has not attempted to enforce the CC ruling.

THE TICKING CLOCK

¶5. (C) Time for negotiations is limited. In meetings with econoffs, members of OPIC, Ex-Im, and EDC stated that they are willing to extend the 45-day negotiation period if progress is being made. However, Ecuador's withdrawal from ICSID provides the lenders with only a six-month window to bring a case. Although the ICSID window closes January 7, 2010, the lenders are likely to initiate their case by late fall 2009, if negotiations with the city of Quito fall through.

¶6. (C) On September 4 the CCC, which guarantees the construction of the new airport, announced its intention to stop construction activities due to the lenders' discontinuation of funding. Stoppage of construction, which currently employs over 2,000 Ecuadorians, would be politically disastrous for Mayor Barrera and threaten the project. (Note: one of the lenders stated that if construction stops, they will immediately push for arbitration. End Note.) In a series of tense conference calls the lenders reminded the CCC of its contractual obligation to continue construction activities for 60 days plus 30 days "wind down." On September 8 the CCC agreed to maintain construction operations for the "immediate future", although continuation of construction through October appears increasingly unlikely unless the lenders receive sufficient assurances from the Mayor of Quito and the GoE that a legal accommodation to the CC ruling can rapidly be found.

COURT RULING HITS AIRLINES TOO

¶7. (C) In late August, many airlines serving Quito stopped paying service fees (landing, illumination, etc.) to Quiport, supposedly concerned that they could face legal action for not complying with the Constitutional Court's ruling. Although most airlines have since reinitiated payment, U.S. carriers Delta, American, and Continental continue to withhold payment to Quiport. The lenders have instructed Quiport to maintain services to the airlines in the short term to avoid further complicating the negotiating environment. Ex-Im is attempting to negotiate with the airlines'

corporate offices through contacts at Boeing. This is not the first time that Quiport and the airlines have clashed over airport fees (ref A).

THE MAYOR'S DILEMMA

¶8. (C) Mayor Barrera made his intention to renegotiate the airport concession and seek a larger share of the airport revenue a part of his election campaign. His assertion that the airport concession is an unfair deal for the city of Quito, which receives about $1.5 million annually from airport operations, tracks with President Rafael Correa's documented discontent with the airport concession. Correa referred to the arrangement as "highway robbery" ("un atraco") in a 2007 statement. (Ref B). In a lunch with econoffs

September 8, Philippe Baril (protect), the President of Quiport, agreed that there is room for the Quito government to receive additional money, although he did not offer any specifics as to the amount. The lenders appear loath to reopen the concession, believing that doing so would weaken their case should they eventually opt for arbitration. However, they have expressed willingness to let Quiport share a greater portion of the profits with the GoE.

¶9. (C) All parties to the airport concession agree that the President's office must authorize any new agreement related to the airport for it to be valid. Thus far, however, the President and the GoE have kept a low profile on the issue. In an August 19 meeting with the lenders, Coordinating Minster Galo Borja did not communicate a position on the concession contract and indicated that it was the Mayor's job to solve the problem of the CC ruling.

¶10. (C) During his August 19 meeting with the lenders and Quiport, Mayor Barrera pledged to submit terms for a renegotiated contract and possible measures to satisfy the CC ruling within a week. Barrera has subsequently been quoted in the media as saying that his proposal for a renegotiated contract is "with the lenders." To date, the lenders have not received a proposal from Barrera, nor any official indication of how the concession contract can continue under the CC's ruling. During the September 8 meeting with Econoffs, Quiport President Philippe Baril indicated that despite several meetings with the Mayor, Barrera has not given specifics on what the GoE or Quito municipality would want out of a renegotiated concession contract.

¶11. (C) Barrera's attempt to find a way to follow the CC ruling while not violating the terms of the concession contract appears a work in progress. Barrera has consistently emphasized to the lenders his need to comply with the CC ruling. In recent weeks, contacts at the Canadian Embassy and Quiport have reported that Barrera has developed a workable solution relieving Quiport from having to deposit airport fees into a municipal account, a step the lenders have said would force them into arbitration.

¶12. (C) According to Quiport, the Mayor is working with the Comptroller's Office to identify terms that would satisfy the court's ruling. The Comptroller is the same office that audited airport operations in January 2009 (ref C), ultimately bringing to the GoE's Attorney General a case against Quiport for non-compliance with the constitution. Embassy contacts state that the Attorney General's Office rejected their case, leading the

Comptroller to raise it directly with the CC, triggering the ruling. Embassy contacts close to former Quito Mayor Pablo Moncayo have described the Comptroller as being "about money."

COMMENT

¶13. (C) Failure to resolve the airport issue could have broader consequences for U.S.-Ecuadorian relations. The GoE is a counter-party to the Investment Protection Agreement. If the Quito municipal government takes action that prevents Quiport from paying back the lenders, forcing a default, the GoE should then assume the project debt. A default by the GoE on Ex-Im and OPIC loans could potentially trigger sanctions on future U.S. assistance under the

Brooke Amendment and Foreign Assistance Act Section 620(q).

¶14. (C) Comment continued: Although the "face" of the new Quito airport project has traditionally been Canada, the majority of the funding comes from American sources and a souring of the deal would likely result in bad press for the U.S., giving President Correa an easy target. In recent days Quiport and the Canadian Embassy have reached out to the Embassy to urge we assist in pushing the lenders to be more proactive in pursuing negotiations with the Mayor and the GoE. OPIC and the IDB responded, holding a meeting with the municipal government's lawyer in Washington and scheduling a trip to Quito September 14 for two days of meetings. Our fear is that neither the lenders nor the relevant branches of the Ecuadorian government have clearly communicated their bottom line, and that construction on the new airport might suddenly grind to a halt despite a mutual desire to find an accommodation.
HODGES